

November 8, 1996

OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON  
700 Central Building  
810 Third Avenue  
Seattle, Washington 98104  
Telephone (206) 296-4660  
Facsimile (206) 296-1654

REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL.

SUBJECT: Department of Transportation File No. V-2155  
Proposed Ordinance No. 96-749

DONALD & NADINE MASOERO  
Petition for Road Vacation  
Appeal of Recommendation for Denial by  
Department of Transportation

Location: Portions of South 259th Place and South 260th Street, located west of  
Military Road South and east of Interstate 5

Petitioners: Donald & Nadine Masoero  
3317 South 259th Street  
Kent, WA 98032

Appellants: Donald & Nadine Masoero

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Grant South 259th Place petition, in part; deny South 260th Street petition
Department's Final:	Same as above
Examiner:	Same as above

PRELIMINARY MATTERS:

Petition submitted:	April 12, 1993
Department Preliminary Report issued:	October 7, 1996

EXAMINER PROCEEDINGS:

Hearing Opened:	October 21, 1996, 9:20 a.m.
Hearing Closed:	October 28, 1996, 4:00 p.m.

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

Road vacation: Compensation  
Usefulness of right-of-way

**FINDINGS, CONCLUSIONS & RECOMMENDATION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

1. General Information:

Road name and location: Portions of South 259th Place and South 260th Street,  
located west of Military Road South and east of  
Interstate 5

Right of way classification: "B" for 259th; "C" for 260th

Compensation: South 259th Place - \$1,250.61; South 260th Street -  
none

2. Donald and Nadine Masoero (the "Petitioners") seek vacations of portions of South 259th Place and South 260th Street, located west of Military Road South and east of Interstate 5. The Masoero petition comprises a portion of a joint petition filed by several neighbors. Due to the costs involved in the appeal process, only Petitioners Masoero have appealed at this time. The neighboring property owners, Bangs, Witter, Beecroft, Capps, and Lau (hereinafter, the "Joint Petitioners") are waiting to learn the disposition of this case before they determine whether to pursue their respective vacation petitions.

3. Two vacations are petitioned. Abutting the north boundary of the Masoero property, the Petitioners seek South 259th Place right-of-way. Abutting the south Masoero property line, Petitioners ask for South 260th Street right-of-way. South 259th Place is developed; South 260th Street is not.

4. The following findings are relevant to the petition to vacate South 259th Street.

- a. King County Road Standards (KCRS) designate the relevant segment of South 259th Place as a minor arterial, requiring 84 feet of right-of-way. On this basis, both the Transportation Planning Section and the Roads and Engineering Division of the King County Department of Transportation (KCDOT) recommend that any road vacation resulting from this petition be required to leave 42 feet of right-of-way south of the South 259th Place centerline.
- b. The Cities of Kent and Federal Way agree that the subject property and subject road segment are located within the City of Kent "sphere of influence"; that is, within that area of unincorporated King County which one day may be expected to be annexed to City of Kent. There is no annexation action pending presently, nor is any known to be planned in the foreseeable future. City of Kent and King County have no sphere of influence interlocal agreement. The City of Kent asks that the Council preserve 46 feet of right-of-way south of the South 259th Place centerline; that is, four feet more than recommended by the Road Engineer.
- c. Petitioners appeal the Road Engineer's determination regarding required compensation for South 259th Place right-of-way vacation. Petitioners base their position in part on KCC 14.40.020.E which states:

The Council may waive some or all of the compensation for any classification of road if it determines that it would benefit King County to do so.

Petitioners argue further that there was no cost to King County when the State quit claimed the property to the County; that the KCDOT Road Maintenance Division has not truly "maintained" the right-of-way; and, that requiring compensation for right-of-way acquisition and then taxing the acquired property constitutes "double taxation". Finally, Petitioners appeal with respect to required compensation on the basis that 259th should be classified as "Class C" (for which KCC 14.40.020.A requires compensation in the amount of only 50%); and, that recent Department of Assessment appraisals, "have gone down" (suggesting that the compensation due to King County for acquired roadway should be commensurately reduced).

- d. In contrast to the Petitioner's argument for classification of South 259th Street as "C" Class right-of-way, the Road Engineer has concluded that it is "B" Class right-of-way, requiring 75% of the assessed valuation. The amount of compensation required by the Road Engineer's determination is \$1,250.61.

The Road Engineer concedes that the record lacks sufficient evidence to indicate whether the right-of-way was originally acquired by either County or State expenditure of public funds. Lack of Staff resources has limited the Road Engineer's ability to research that issue. Consequently, the Road Engineer has designated South 259th Street as a "B" Class road, instead of Class "A".

- e. KCC 14.40.060 defines a "B" Class road as a road or other real property interest acquired at no monetary cost to the County and for which funds have been expended for improvement or maintenance. A "C" Class road or real property interest is also acquired without the expenditure of public funds, but has had no improvement or maintenance.
  - f. The road in question appears in the County maintenance budget. The record lacks evidence of specific maintenance measures taken, although the Petitioner recollects that the right-of-way alongside the road has been mowed once in the past several years. Even though the right-of-way is used daily by the motoring public, Petitioners argue that it is not actually "maintained" by the County.
5. Regarding the petition to vacate South 260th Street right-of-way, the following findings are relevant:<sup>1</sup>
- a. The South 260th Street right-of-way segment in question has not been developed, except that some property owners use it for private access. The hearing record does not indicate whether these persons have acquired a County right-of-way use permit.
  - b. The right-of-way segment at issue in the joint petition (including Masoero) is 60 feet wide and over 956 feet long, thereby comprising 49,906 square feet, or approximately 1.15 acre.<sup>2</sup> The Masoero petition, however, is only 30 by 82.82 feet, comprising 2,484.6 square feet, or 0.06 acre.
  - c. The Masoero property and the Joint-Petitioners' properties together comprise approximately 7.83 acres, excluding the (at least) 1.15-acre South 260th Street right-of-way.<sup>3</sup> These properties are presently developed with six single-family residences (one each on each ownership).
  - d. Petitioner Masoero property and the Joint Petitioner properties are classified as "R-4" by the King County Zoning Code (KCC Title 21A). This zoning classification authorizes a maximum development density of six dwelling units per acre and requires a minimum development density of 3.4 dwelling units per acre.

Consequently, the Masoero property, when redeveloped, may yield five dwelling units; Bangs, 10 units; and, Lau, 19 units. Altogether, the Petitioner and Joint- Petitioner's properties, comprising 7.83 acres, may yield a total development of 46.9 dwelling units, including the six units already there.

---

<sup>1</sup>Acreage calculations used in these findings are based principally upon Petitioners' Exhibit No. 38.

<sup>2</sup>The County does not own 260th right-of-way adjacent to Witter and Beecroft. Thus, 7,453.5 square feet of Witter/ Beecroft property must be excluded from 260th right-of-way area computation.

<sup>3</sup>For the same reason indicated in footnote 2, above, 7,453.5 square feet must be added to the Witter/Beecroft acreages shown on Kroll and Assessor maps in order to obtain the true acreage of Beecroft/Witter.

Adding this 1.15-acre of 260th right-of-way to the Petitioner's and Joint Petitioner's properties would add an acreage-based density potential of 6.9 dwellings, thereby creating a total development potential for the Petitioner's and Joint-Petitioners' properties of 53.8 units. Unfortunately, it would be difficult or impossible to provide County standard access to such urban density without requiring the dedication (or rededication) of South 260th Street right-of-way. If subdivision were then to occur, the property owners nonetheless would still retain credit for the increased development potential obtained by the now petitioned road vacation.

- e. The combined area of the 259th and 260th right-of-way acquisitions for Petitioners Masoero would comprise approximately 6,341 square feet, or 0.5 acres, thereby allowing the Masoero property to expand development potential from 5.1 dwelling units per acre to 6 dwelling units per acre. The increase for Bangs and Lau would be more noteworthy; from 10.5 dwelling units per acre to 12.72 dwelling units for Bangs; from 19 to 24 dwelling units for Joint-Petitioner Lau.
  - f. Both the King County Department of Development and Environmental Services (Land Use Services Division) and KCDOT Roads and Engineering Division recommend denial of the requested vacation because they conclude that South 260th Street right-of-way is necessary to accommodate future potential subdivision. In a sense, Joint Petitioner Capps agrees with that analysis, but comes to a different conclusion; that is, Mrs. Capps would like to see the South 260th Street right-of-way vacated in order to diminish the future development potential of the neighborhood. This, she argues, would diminish the potential for exacerbation of perceived existing hazardous conditions at the South 260th Street/Military Road South intersection. As a general rule, such circumstances are taken into account during the review and design of proposed subdivisions.
6. Having reviewed all of the evidence and testimony, the Road Engineer's final recommendation is unchanged from its preliminary recommendation.
  7. Except as provided above, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department of Transportation's report to the King County Hearing Examiner for the October 21, 1996, public hearing, which will be attached to those copies of this report and recommendation which are submitted to the King County Council.
  8. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are Attachments 1 and 2 to this Report and Recommendation.
  9. Any portion of any of the following conclusions which may be construed as a finding is incorporated here by reference.

#### CONCLUSIONS:

1. South 259th Place Vacation Petition. The petition to vacate some portion of South 259th Place should be approved, subject to the condition that 42 feet south of the street centerline must be preserved as public right-of-way. The County Road Engineer has determined that the right-of-way width will be preserved if the petitioners are allowed to acquire a strip of right-of-way eight feet wide running along the frontage of the subject Masoero property. It is necessary to preserve 42 feet south of the centerline in order to comply with King County Road Standards (KCRS). The petitioner has not contested that conclusion or requirement. Likewise, the Road Engineer has not argued for the usefulness of the recommended vacation of an eight-foot-wide strip of right-of-way along the Masoero frontage. There is no evidence of record which would support a conclusion that it is so useful that it should be retained by the County.

The City of Kent has no jurisdiction and no sphere of influence agreement with King County. For that reason, the City's request for additional right-of-way preservation should not be granted.

2. South 259th Place Compensation. The County Road Engineer has correctly determined that the compensation rate should be based upon a "B" classification of South 259th Place right-of-way. The key issue, considering the KCC 14.40.06 road classification criteria, is whether King County has expended funds for the improvement or maintenance of the road. While the hearing record contains no actual maintenance expenditure records, the King County DOT Maintenance Section contends that it maintains the road, and Petitioner Masoero has testified that he has seen the

right-of-way mowed. While the Petitioner may contest the sufficiency of such a minor maintenance measure, the fact that County maintenance has occurred within this road right-of-way incontrovertible.

The South 259th Place right-of-way, after all, is not some abandoned and ignored right-of-way. It is an improved and functioning principal arterial, used daily by the motoring public of King County. As such, King County is fully responsible for its maintenance, regardless of however often that maintenance may be required. Consequently, this street should be regarded as a "B" Class street, and compensation should be based on that amount.

KCC 14.40.020 authorizes the Council to waive some or all of the compensation for any classification of road if it determines that it would benefit King County to do so. This hearing record contains no showing of any such benefit resulting from waiving any part of the compensation which is due to the County.

3. The following additional conclusions apply to the petition to vacate a portion of South 259th Place right-of-way:
  - a. The South 259th Place right-of-way portion subject to this petition is useless as part of the King County road system, and the public will be benefited by its vacation as limited below.
  - b. The Notice of Hearing on the report of the Department of Transportation was given as required by law, and a hearing on the report was conducted by the King County Hearing Examiner on behalf of the King County Council.
  - c. The compensation required by law to be paid as a condition precedent to the vacation of this road has been deposited with King County, and the easements, if any, necessary for the construction, repair and maintenance of public utilities and services have been provided in form satisfactory to the affected public utilities.
4. South 260th Street Vacation Petition. The requested petition to vacate South 260th Street should be denied. Conclusions drawn by the Department of Development and Environmental Services and by the Transportation Planning Section regarding the subdivision potential of the properties served by this right-of-way are correct. These properties have immense subdivision potential. To grant the requested petition would increase the development density to which the Petitioner is entitled, but at the same time would diminish the potential for accommodating the access needs of future subdivisions in this neighborhood.

For Joint-Petitioner Lau and other property owners westward, the South 260th Street right-of-way is the only reasonable access. A previous effort to short-subdivide the Lau property failed, according to hearing testimony, because the improvement costs were too excessive for the number of lots created. This, of course, increases the probability that this property and other neighboring large lot properties will be formally subdivided using the density potential provided by the R-4 classification. See Finding Nos. 5.d and 5.e, above.

If the petition were granted, along with the joint petitions, then the Masoero property would be "landlocked" except for its access to a principal arterial, South 259th Place. The same would be true of Beecroft, Banks and Witter. Thus, the redevelopment of each of these properties would result in a series of small cul-de-sac streets accessing a principal arterial, a sure prescription for safety hazard. In addition, of course, the principal arterial intersection spacing standards contained in the KCRS would also be violated.

Considering the foregoing, the only reasonable conclusion must be to preserve the existing South 260th Street right-of-way.

#### RECOMMENDATION:

- A. GRANT South 259th Place right-of-way to the Petitioner, EXCEPT that all right-of-way within 42 feet of the South 259th Place centerline shall be preserved in King County ownership. The remaining eight feet of right-of-way width shall be vacated.
- B. Compensation for the South 259th Place vacated right-of-way shall be based upon "B"

classification of this principal arterial right-of-way.

The King County Department of Transportation shall review its appraisal of the right-of-way value, taking into consideration the Petitioner's reported diminished appraised land value for the adjoining property, Tax Lot No. 90. If, based upon that review, the compensation due to the County is diminished, then the Department shall refund the appropriate portion of the Petitioner's deposit. However, in no case shall the computed compensation be increased above the amount in deposit.

C. DENY the petition to vacate South 260th Street.

RECOMMENDED this 8th day of November, 1996.

---

R.S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 8th day of November, 1996, to the following parties and interested persons:

Benton M. Bangs, Jr.	Warren E. Beecroft
Leland Capps	Highline Water District
Jim Harris/City of Kent	Eugene Lau
Donald & Nadine Masoero	Puget Sound Power & Light
Christine Price/US West	Larry Underdahl/METRO
Jason VanNort/WA Natural Gas	
Walter Witter	

Tommy Burdette, King Co. Dept of Transportation  
Sharon Claussen, King County Parks Division  
Tom Eksten, King County Parks Division  
Dennis Gorley, King County Dept of Transportation  
Bill Hoffman, King County Dept of Transportation  
Rod Matsuno, King County Dept of Transportation  
Lloyd Neal, King County Dept of Transportation  
Dave Preugschat, King County Property Services Division  
Lisa Pringle, DDES/Land Use Services Division  
Lydia Reynolds, King County Dept of Transportation  
Gary Samek, King County Dept of Transportation  
Charlie Sundberg, King County Historical Preservation  
Harold S. Taniguchi, King County Dept of Transportation  
Paul Toliver, King County Dept of Transportation

NOTICE OF RIGHT TO APPEAL  
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council or before November 22, 1996. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before November 29, 1996. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal is not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the

Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless within twenty (20) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE OCTOBER 21, 1996 AND OCTOBER 28, 1996 PUBLIC HEARING ON  
DEPARTMENT OF TRANSPORTATION FILE NO. V-2155 - MASOERO:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Dennis Gorley, Don Masoero, Mrs. Leland Capps, and Warren Beecroft.

The following exhibits were offered and entered into the record:

Entered October 21, 1996:

Exhibit No. 1	Department of Transportation Preliminary Report to the Hearing Examiner for the October 21, 1996 public hearing, with attached comments
Exhibit No. 2	Petition transmittal letter dated April 12, 1993 to Transportation from Clerk of Council
Exhibit No. 3	Petition for vacation
Exhibit No. 4	Copy of check for non-refundable deposit
Exhibit No. 5	Quit Claim Deed from Carrie Berto to King County
Exhibit No. 5A	Quit Claim Deed from Wm. Fernyhough to King County
Exhibit No. 5B	Quit Claim Deed from State of Washington to King County
Exhibit No. 6	Map depicting vacation area
Exhibit No. 7	Vicinity map
Exhibit No. 8	History of Road Vacation File No. V-2155
Exhibit No. 9	Letter dated June 27, 1994 to petitioners from Road Services Division
Exhibit No. 10	Letter dated July 25, 1994 to Road Services Division from Donald Masoero
Exhibit No. 11	Letter dated August 3, 1994 to Donald Masoero from Road Services Division
Exhibit No. 12	Letter dated September 6, 1994 to Road Services Division from Walter & Ester Witter
Exhibit No. 13	Letter dated September 6, 1994 to Road Services Division from Rita & Leland Capps
Exhibit No. 14	Letter dated October 3, 1994 to Mr. & Mrs. Witter from Road Services Division
Exhibit No. 15	Letter dated December 29, 1994 to Mr. & Mrs. Witter from Road Services Division
Exhibit No. 16	Letter dated March 5, 1995 to Road Services Division from Benton & Marion Bangs
Exhibit No. 17	Letter dated March 5, 1995 to Road Services Division from Warren & Juanita Beecroft
Exhibit No. 18	Letter dated March 22, 1995, with attached copy of KCC 14.40, to Warren & Juanita Beecroft from Road Services Division
Exhibit No. 19	Letter dated March 22, 1995, with attached copy of KCC 14.40, to Benton & Marion Bangs from Road Services Division
Exhibit No. 20	Recommendation letter dated May 25, 1995 from Department of Transportation, Road Services Division, to Clerk of King County Council
Exhibit No. 21	Letter dated June 1, 1995, to Donald Masoero from Road Services Division, identifying amount of compensation
Exhibit No. 22	Letter dated June 1, 1995, to Walter & Ester Witter from Road Services Division, identifying amount of compensation
Exhibit No. 23	Letter dated June 1, 1995 to Benton & Marion Bangs from Road Services Division, identifying amount of compensation

Exhibit No. 24	Letter dated June 1, 1995 to Warren & Juanita Beecroft from Road Services Division, identifying amount of compensation
Exhibit No. 25	Letter dated June 1, 1995 to Leland & Rita Capps from Road Services Division, identifying amount of compensation
Exhibit No. 26	Letter dated June 1, 1995 to Eugene Lau from Road Services Division, identifying amount of compensation
Exhibit No. 27	Road Vacation Worksheet V-2155.XLS revised
Exhibit No. 28	Copy of compensation check from Donald Masoero
Exhibit No. 29	Letter dated November 3, 1995 to petitioners from Road Services Division, given notice to pay compensation
Exhibit No. 30	Letter dated March 29, 1996 to Benton Bangs from Road Services Division, given notice of expiration of time to pay compensation
Exhibit No. 31	Letter dated March 29, 1996 to Warren Beecroft from Road Services Division, given notice of expiration of time to pay compensation
Exhibit No. 32	Letter dated March 29, 1996 to Walter Witter from Road Services Division, given notice of expiration of time to pay compensation
Exhibit No. 33	Letter dated September 6, 1996 from King County Executive to Councilmember Jane Hague
Exhibit No. 34	Proposed Ordinance 96-749
Exhibit No. 35	Notice of Hearing and Affidavit of Posting
Exhibit No. 36	Affidavit of posting
Exhibit No. 37	Letter from City of Kent to Road Services Division dated October 18, 1996
Exhibit No. 38	Outline of Donald Masoero's presentation at hearing, October 21, 1996

Entered October 28, 1996:

Exhibit No. 39	Citation of Authorities offered by King County Dept. of Transportation
Exhibit No. 40	Beecroft mortgage dated October 12, 1996, with attached drawing showing vacation
Exhibit No. 41	Capps Statutory Warranty Deed dated December 11, 1986, with attached map
Exhibit No. 42	Page 10, Section 2.02 of King County Road Standards
Exhibit No. 43	King County Road Log for Field Investigation Report
Exhibit No. 44	King County assessment records for adjacent properties

RST:gb

Attachments

\vacation\v-21\v-2155.rpt